Report Concerning Relations Between Local Governments and First Nation Governments

Submitted to the *Provincial/Territorial Senior Officials of Local Government Committee*
by
Alberta Municipal Affairs, in Cooperation with
British Columbia's Ministry of Community, Aboriginal and Women's Services and Manitoba Intergovernmental Affairs

Report Prepared by Tamera Services Ltd. May 31st, 2002
Suite 220, 10403 – 172 Street Edmonton, Alberta T5S 1K9

Table of Contents

Executive Summary 4

I. Introduction 9

II. Project Tasks 9

III. Background – the Relationship Environment 11

IV. Interaction/Relationship Success Stories and Challenges 13

Building and Maintaining Relations *13*
Leadership is Critical *17*
Formal Arrangements *18*
Resources, Expertise and Capacity *22*
Governments Must Educate Each Other *23*
Impact on Local Issues *25*

V. Conclusion 28

Appendix "A" - A Perfect World 30

Appendix "B" - Acronyms 32

Appendix "C" - Questionnaires 33

Appendix "D" - Interviewees & Respondents 37

Appendix "E" - Terms of Reference 40

Appendix "F" - Research Materials List 41

Appendix "G" – Benoit Case Summary 46

Executive Summary 4

I. Introduction 9

II. Project Tasks 9

105-03658/

III. Background – the Relationship Environment 11

IV. Interaction/Relationship Success Stories and Challenges 13

V. Conclusion 28

Appendix "A" - A Perfect World 30

Appendix "B" - Acronyms 32

Appendix "C" - Questionnaires 33

Appendix "D" - Interviewees & Respondents 37

Appendix "E" - Terms of Reference 40

Appendix "F" - Research Materials List 41

Appendix "G" – Benoit Case Summary 46

Executive Summary

This report describes some of the key elements and resources necessary to ensure positive relationships between local governments and First Nations.

Interaction between local governments and First Nations has increased and become more complex, partly as a result of land claim settlements and self-government negotiations. The creation of urban and economic development reserves, different tax treatment of Indian lands, the need for joint planning, and issues related to cost recovery for municipally provided services to reserves have brought local government-First Nation relationships to the fore.

Information for the report was gathered through a survey of municipal organizations and local governments, interviews with municipal leaders, administrators, provincial/territorial officials and various experts in local government-First Nation relationships. An array of relevant articles and studies were also reviewed.

Principles and Recommendations

A. Building and Maintaining Relations is Fundamental to Avoiding Conflict and Resolving Disputes in a Positive Manner

Provincial and territorial governments should encourage local governments and First Nation governments to engage in relationships at the individual level, at the community level, and to build on personal interactions by encouraging and formalizing open, honest, face-to-face dialogue between governments.

i.) The most important factor in establishing and maintaining good intergovernmental relations is developing and maintaining good relationships through open communication and face-to-face meetings.

ii.) Adjacent aboriginal and non-aboriginal communities that consider themselves to be a whole community tend to have more positive relationships.

1. Provide resources to, provincial and territorial municipal organizations to administer an ongoing "Community to Community Forum Program". An excellent model to consider is the program currently being administered in British Columbia at the local and provincial level by the Union of British Columbia Municipalities.

2. Seek out, encourage and resource *ad hoc* joint initiatives between municipal interest groups and First Nation interest groups to form joint advisory committees. These advisory committees could travel to local communities and engage the community in whatever the issue may be.

3. Encourage and resource local governments to employ aboriginal persons and to undertake procurement through aboriginal suppliers.

4. Develop and resource, in conjunction with local governments and First Nation governments, communication plans that broadcast in a variety of media, stories of positive aboriginal and non-aboriginal governmental and community interactions.

B. Leadership is Critical in Establishing and Maintaining Ongoing Positive Relationships Between First Nation and Local Governments

Provincial and territorial governments should encourage and support educational programs designed to help political leaders and government administration find common ground.

i) At some point, elected and employed officials of First Nations and local governments must recognize the importance of identifying common interests and the pursuit of mutual benefits.

1. Encourage, develop, facilitate and resource educational programs for local governments and First Nation governments and staff to jointly attend. Interest based negotiation techniques should form the core of the programs developed.

C. Formal Arrangements Such as Memoranda of Understanding, Agreements in Principle and Development and Service Agreements, Help Institutionalize Positive Working Relationships

Provincial and territorial governments should assist local governments and First Nation governments in the preparation of various forms of agreements and protocols that facilitate positive relationships. Federal/Provincial/Territorial Agreements touching on local government and aboriginal issues should be drafted in a way that facilitates positive relationships between local governments and First Nation governments.

i.) Bottom-up agreements are successful in stimulating interest in cooperative government.

ii.) Treaty Framework Agreements that require agreement or good faith discussions prior to reserve creation can also serve as inducements to bring First Nation and local governments together to negotiate.

iii.) Precedents provided to First Nations and local governments are useful as they help organize minds and reduce anxiety over the unknown.

iv.) Precedents prepared for First Nations and local governments do not replace the need to access advisors with specialized knowledge.

v.) Good technical people involved in the drafting process are necessary but good drafting does not create good relationships.

vi) Agreements can set out Alternate Dispute Resolution (ADR) processes that provide certainty, flexibility, predictability and empower all participants.

1. Manuals, precedent service[1] and development agreements and other resource documents should be designed for each jurisdiction, updated and made available to local governments and First Nation governments.

2. Treaty Agreements between Canada, First Nations and Provincial/Territorial governments, in consultation with appropriate local governments, should expressly address municipal and school taxation issues and reserve creation within urban and rural local government boundaries.

D. Local and First Nation Governments Require Resources, Expertise and Capacity to Create, Enhance, and Maintain Harmonious and Productive Relationships

Provincial and territorial governments should dedicate resources for special advisors. These advisors would create, assemble and disseminate useful information for local governments and First Nation governments. Special advisors should also provide advice when requested. Provincial and territorial governments should consider if advice and assistance to local governments and First Nation governments might be better provided through an existing or proposed "honest third party broker".

i.) Solutions to jurisdictional and land use issues are often beyond the reach of many local and First Nation governments. Access to special advisors and funding would be helpful.

ii.) Services such as training in interest-based negotiations, facilitation, mediation and resource centres could be available and brokered by independent third parties.

1. An accessible user-friendly database, whether electronic or paper, should be maintained for local governments and First Nation governments.

2. Expert provincial and territorial special advisors should be trained and made available to provide practical and helpful advice and assistance to local governments and First Nation governments.

3. Identify impartial organizations that have a strong record of successful facilitation in municipal-First Nation relations and consider supporting those entities.

---

[1]Maintain a library of sample agreements that can be accessed by local governments and First Nations in preparing appropriate agreements.

E. Local and First Nation Governments Must Educate Each Other in Appreciating the Nature and Scope of Each Other's Governing Authority and Governance Practices

Provincial and territorial governments should engage Canada, First Nations and representative organizations, local governments and representative municipal organizations in a process aimed at clarifying and evaluating roles and responsibilities of all governmental authorities.

i.) Education about differences and similarities in government models and governance practices helps prevent problems arising from ignorance or misunderstanding.

ii) Better-resourced local governments with proven successes should mentor less sophisticated local governments. Similarly, local governments and more sophisticated First Nation governments should mentor less sophisticated First Nation governments

1. Pursue summit forums for each jurisdiction that aim to identify the challenges and possible solutions arising in modern municipal-First Nation relations and the roles and responsibilities of each authority.

2. Provincial and territorial governments should consider if legislation empowering local government provides for the flexibility to design innovative arrangements to jointly deliver services to and with First Nation governments.

3. Create incentives for First Nations to support and hire aboriginal students who undertake disciplines such as urban studies, planning, economics and administration.

4. Encourage local governments to institute co-op work programs where First Nations can appreciate first hand the need for community planning, and learn the necessary governmental skills such as by-law drafting.

5. Support specific cross cultural awareness programs targeted at political leaders and administrative officers of local governments and First Nation governments designed to demystify why respective governments operate with distinctive governance styles.

6. Facilitate and, if necessary, design programs that teach the nature and scope of local government and First Nation government authority and accountability together with components that draw out the interests that each governance structure is intended to satisfy.

7. Facilitate mentoring between local governments and between local governments and First Nation governments.

F. Local and First Nation Governments Need to be Consulted in an Appropriate Way by Federal/Provincial and Territorial Governments, When the Actions of Federal/Provincial and Territorial Governments May Have an Impact on Local Issues

Provincial and territorial governments should consult in a timely and appropriate manner with local governments, prior to entering into agreements with First Nations and Canada, with the intention of identifying and addressing local government concerns.

i) A proper balance must be found in providing timely and appropriate information to local governments respecting "aboriginal" issues important to local government. Inadequate or untimely information sends a message of disrespect, encourages suspicion, and reinforces local governments' belief that they cannot influence the land claim or self-government process.

ii.) Federal/provincial and territorial governments should avoid complicating local discussions and should be supportive of local pragmatic solutions proposed by local and First Nation governments.

iii) Federal/provincial/territorial governments must consult to avoid changes in governmental policy that may disrupt the delicate balance of First Nation and local government relations.

1. Develop and implement Protocol Agreements with local governments and municipal organizations addressing provincial/territorial/municipal expectations as to the subject matter, nature and scope of "appropriate consultation" and the process to satisfy expectations.

I. Introduction

Tamera Services Ltd. is pleased to submit this report to the Provincial/Territorial Senior Officials of Local Government Committee.

This report describes some of the key elements necessary to promote positive relationships between local governments and First Nations. It also provides some suggested actions by Provinces and Territories to assist local governments interested in initiating or sustaining positive interactions with First Nations.

In summer 2001, a discussion paper commissioned by senior Provincial and Territorial officials (the Provincial/Territorial Senior Officials of Local Government Committee) pointed to the increasingly complex relations between First Nations and local governments.

The rationale for the discussion paper was to raise awareness and develop recommendations and implementation plans to avoid and ease potential First Nation-local government conflicts arising from increased interaction.

The discussion paper identified land claims and self-government discussions as the primary reason for increased interactions between local governments and First-Nation governments. Municipal concerns arising from land claims include the potential for urban and economic development reserves, taxation and land-use issues.

The report described relationships between local governments and First Nations as ranging from non-existent, effective and positive to dysfunctional and acrimonious.

The discussion paper proposed further research to be undertaken to assess local government and First Nation relationships. Tamera Services Ltd. (*Tamera*) was engaged on January 24, 2002 to continue this work.[2]

II. Project Tasks

Information about local government and First Nation government interactions was gathered through:

a) The conduct of a survey directed to municipal government organizations and selected local governments across Canada.
b) Interviews with municipal organization administrators.
c) Interviews with local government leaders and local or regional government administrators.
d) Interviews with provincial and territorial officials.
e) Review of relevant monographs, research papers and articles.[3]

[2] Appendix "E" contains the contract terms of reference.

Municipal organizations were asked to describe their work on behalf of member local governments respecting intergovernmental relations with First Nation governments. Local government representatives were asked to describe their relationships with First Nations, particularly related to land use planning, economic initiatives, the delivery and cost recovery of hard and soft services and taxation. Information was also solicited on factors that affect positive relationships (what works, hinders, etc.).

Municipal umbrella organizations from western Canada provided more information in response to the survey. The questionnaire was also translated into French, but there were no responses from francophone municipal organizations. A short window to complete the project and budget constraints permitted only limited on-site interviews with municipalities and municipal umbrella organizations in Alberta, British Columbia, Saskatchewan and Ontario and did not provide for interviews with First Nation representatives. Telephone interviews also extended to the Yukon, Manitoba, Saskatchewan and the Northwest Territories. Participants from other jurisdictions also responded by e-mail or fax. Respondents provided considerable information that clearly identified a range of common themes.

Centre for Municipal-Aboriginal Relations (CMAR)

Early on in the Project, Tamera became aware of a similar but larger project being conducted by CMAR. The Federation of Canadian Municipalities (FCM) and the Indian Taxation Advisory Board (ITAB) established CMAR in 1996. CMAR was created to offer municipal and aboriginal governments support in developing best practices in intergovernmental relations at a local level. It serves as "a forum for the exchange of information and research on issues such as municipal-aboriginal intergovernmental relations, taxation, governance and service delivery."[4] CMAR has no full time staff, is housed within ITAB's Ottawa offices and operates on a project-to-project basis.

CMAR has recently been funded to prepare a nationally researched report that considers municipal-aboriginal relations and economic development initiatives. The project, currently in progress, is called "The Municipal Aboriginal Adjacent Community Cooperation Project." Interviews focusing on adjacent aboriginal and non-aboriginal communities respecting cooperation in economic development were conducted across most of Canada. A draft report has been prepared and discussed with Tamera (but not provided). The draft report will be provided to the corresponding Steering Committee in early June.

[3] Appendix "C" includes the sample questionnaires and Appendix "D" contains the list of organizations that responded and individuals that were interviewed for the report. Appendix "F" lists articles and other relevant literature.

[4] June 3, 1996 Joint Press Release of the Department of Indian Affairs and Northern Development, Indian Taxation Advisory Board and the Federation of Canadian Municipalities, "Centre For Excellence In Municipal-Aboriginal Relations Announced".

III. Background – the Relationship Environment

a) Trends and changing relationships between First Nations, Aboriginal people and Municipalities across Canada

It is only in recent times that the relationship between First Nation governments and local governments has been identified as a significant national issue. For much of Canada's history, *Indians and lands reserved for the Indians* [5]were largely matters for Parliament. Provinces and territories and certainly local governments were only marginally involved in aboriginal issues. Developments over the past thirty-five years have forced unprecedented interaction between local governments, First Nation governments and aboriginal people generally.

In the mid-1970s Canada, Quebec and a number of First Nations and Inuit concluded a number of modern treaties. First Nations and aboriginal people generally have become much more politically active partly through their involvement in constitutional negotiations and participation in several commissions. Constitutional recognition of *existing aboriginal and treaty rights* in the *Constitution Act, 1982* [6]ensured that the profile of aboriginal issues would be enhanced and occupy an important place in Canada's national agenda.

Negotiations between federal/provincial/territorial governments and First Nations have continued unabated since 1982. Several comprehensive land claims have been settled across Canada in previously untreatied areas, as have a great many specific claims. Both types of claims may provide for the setting aside of land for First Nations.

With treaty negotiations comes the requirement that federal/provincial/territorial governments provide land and other resources. In the 1995 report prepared for the Intergovernmental Committee on Urban and Regional Research, Theresa Dust Q.C., concluded that the main result of land claim settlements is self-government. First Nations will control "local affairs" on lands that become part of a treaty settlement or treaty land entitlement.[7]

Coupled with these developments are changes in federal/provincial and territorial policy and legislation that have in several circumstances required negotiations with First Nation governments, resulting in greatly expanded First Nation government powers. These negotiations have often formed part of comprehensive land-claims or have been pursued apart from that process.

Case law interpreting the nature and scope of existing aboriginal and treaty rights, an expanding land base, increased political and economic activism and broader First Nation

---

[5] s. 91(24) *Constitution Act, 1867.*
[6] s. 35(1) *Constitution Act, 1982.*
[7] Theresa M. Dust, Q.C. "The Impact of Aboriginal Land Claims and Self-Government on Canadian Municipalities: The Local Government Perspective," Intergovernmental Committee on Urban and Regional Research, 1995

governmental powers have resulted in increasing interaction with local government. One other additional trend is the migration of Indians and other aboriginal people to urban centres. Particularly in Western Canada, there is a significant migration from Indian reserves to urban centres. This pattern reflects the rural-urban shift generally, but carries additional consequences.

There are few resources available to provide housing or social services for this particularly needful group. Urban centres do not receive funding from Indian and Northern Affairs Canada (INAC) to provide municipal services to Indians formerly receiving services on Indian reserves from First Nation governments or INAC. There are some instances where First Nation governments and aboriginal organizations are entering into arrangements with urban centres to provide services to off-reserve Indians. Although this issue is not considered in any large extent in this report, it remains as a tremendous challenge that colours intergovernmental relations with Canada, the Western Provinces and First Nations.

b) Current Challenges

A 2001 discussion paper was prepared for the Provincial/Territorial Senior Officials of Local Government Committee was entitled, "Relations Between First Nation Communities and Local Governments". This paper referred to a number of challenges respecting local government and First Nation government relations. These challenges include:

- land-use regimes and practices that differ, and often conflict, between Indian reserves and adjacent municipalities,
- loss of taxation base when property formerly taxed by a local government is set aside as an Indian reserve (and non assessable),
- disparity between taxation regimes on-reserve and off-reserve for business,
- developing functional agreements respecting the delivery of hard and soft services (and the payment for same) from a local government to a First Nation government,
- political relationships between local governments and First Nation governments, and changing authority structures (arising from federal statute and self-government negotiations), and
- developing useful dispute settlement mechanisms.

Tamera's research confirms that these challenges remain.

The March 7, 2002 Federal Court of Canada tax case, *Benoit et al. v. Canada and Alberta et. al,* sets out what may become a new stage in the relationship between local governments, and indeed all governments, and aboriginal people. The Court held that Treaty 8 Indians within the Treaty 8 areas of northern Alberta, north eastern B.C., southern Northwest Territories and north western Saskatchewan enjoy a treaty right to be exempt from federal income taxation (and, by logical extension,provincial and municipal taxes). The case is being appealed and a stay is now in place preventing the general tax exemption from being applied. It is important to stress that the reasons for the decision are restricted to the specific Treaty. What is not known is if First Nation governments and Indian organizations will continue their success in the Federal Court of Appeal, and if the principles behind the decision will be followed in

other treaty areas (and areas subject to treaty negotiations.) A case brief respecting the decision is attached as Appendix "G".

In many instances, relationships are defined in the context of these challenges rather than in the context of identifying and exploiting common interests and mutual gains. This paper hopes to identify principles and provide recommendations that will assist in framing a new paradigm of relationship.

IV. Interaction/Relationship Success Stories and Challenges

Overview

After analyzing the written material, questionnaires and interviews, a number of common principles emerged. Although there may be several ways these principles could be described, they all relate to creating, enhancing and maintaining harmonious and productive relationships between local governments and First Nation governments.

In every interview, those questioned observed that relationships are the glue that binds aboriginal and non-aboriginal communities together in a positive way. Without a positive relationship, these communities often suffered from unproductive conflict.

We have set out below what we believe to be the "Principles" behind creating, enhancing and maintaining harmonious and productive relationships between local governments and First Nation governments. We support each Principle with some discussion reflecting what local governments (and municipal organizations) have told us, thus confirming the Principle. Finally, we have attempted to provide recommendations and specific actions for the consideration of Provincial/Territorial Ministers responsible for Local Government. Each jurisdiction may quite properly wish to consider the value of such recommendations and actions individually, quite apart from a consideration of the Provincial/Territorial Ministers as a whole.

Building and Maintaining Relations

Building and Maintaining Relations is Fundamental to Avoiding Conflict and Resolving Disputes in a Positive Manner

> ***i.) The most important factor in establishing and maintaining good intergovernmental relations is developing and maintaining good relationships through open communication and face-to-face meetings.***

As stated above, the absence or presence of positive trusting relationships is the most important indicator in avoiding intergovernmental conflicts, resolving disputes and cultivating mutual benefits for aboriginal and non-aboriginal communities.

Alberta

The Municipal District (MD) of Lesser Slave River Number 124 indicated that some First Nations only communicate through their lawyers rather than engaging municipal councils through attendance at municipal meetings or invitations to First Nation Band Council meetings. The MD observes that successful and productive activities seem to be more frequent when initiatives are focused on individual relationships rather than government-to-government communication. Representatives of the Alberta Association of Municipal Districts and Counties (AAMD&C) agreed that personal relationships are critical in establishing positive intergovernmental relations. Many local governments understand this and appoint aboriginal people to municipal boards or committees. This, as AAMD&C representatives point out, does not always result in understanding the perspective of First Nation governments, as aboriginal committee members are often reluctant to be seen as representing the aboriginal community or First Nation government's views.

British Columbia

Some Greater Vancouver Regional District (GVRD) officials are of the opinion that relationship building is the number one issue to be dealt with. In recognition of this, the GVRD is considering planning and implementing a course for First Nations, member municipalities and the University of British Columbia specifically designed to "build a best-practice guide for relationship building." The proposed title for this initiative is, "Building Better Relationships between Local Governments and First Nations."

The Union of British Columbia Municipalities (UBCM) supports the importance of face-to-face communication. Mechanisms that encourage and develop relationship building are critical and not to be dismissed as mere "touchy-feely" exercises. A singularly impressive program sponsored by the UBCM is the "Community to Community Forum Process". This program also has the support of equivalent First Nation organizations and governments. The federal government and British Columbia government provide modest funds to UBCM to administer the program.

First Nation governments and adjacent local governments apply to UBCM for modest grants (averaging $1,500) to hold local forums with local politicians to discuss local issues. Because UBCM has designed an application/information kit, applicants must meet certain conditions to obtain money. In this manner some discipline is imposed on the process yet provides enough flexibility to encourage governments to apply.

It is hoped that this political dialogue will, over time, trickle down to administration–technical levels as well. If this occurs, the information needed to resolve land management issues will be available for local government and First Nation government land use administrators. These meetings also help to identify where joint economic development initiatives and other joint programs with shared outcomes and objectives may exist.

Although the "Community to Community Forum Process" is a local strategy, a province-wide joint forum is also held annually in British Columbia. British Columbia, BC Hydro, BC Gas and the BC Municipal Financial Authority fund this process. Other municipal organizations in other provinces spoke of the need to participate in these types of forums.

Manitoba

A forum called the "Northern Mayors and Chief's Forum, 'Moving Together into the 21st Century", was held in northern Manitoba in January 2000. This provided an opportunity for Chiefs and northern Mayors to discuss "common concerns and to promote the improvement of working partnerships between communities, all levels of government and the private sector."[8] The Association of Manitoba Municipalities (AMM) identified the value of face-to-face meetings with First Nation organizations, but also noted that a number of attempts to organize a conference with the Manitoba Assembly of Chiefs have not been successful.[9]

Saskatchewan

The Saskatchewan Urban Municipalities Association (SUMA) and the Saskatchewan Association of Rural Municipalities (SARM) were invited to a forum with Saskatchewan, Canada, the Federation of Saskatchewan First Nations (FSIN) and First Nations at the beginning of the Saskatchewan Treaty Land Entitlement Process. Meetings now address the "Fiscal Relations Table Process" that will develop proposals for a new intergovernmental fiscal relationship under an aboriginal self-government regime. Unfortunately the committee has not met for two years. SUMA representatives felt harmonious and productive relations with First Nation governments would be greatly aided if these dialogues were rekindled.

City of Saskatoon officials spoke of a joint SUMA and FSIN Committee that travelled across Saskatchewan in 1993 and 1994 after the signing of the Saskatchewan Treaty Land Entitlement Agreement in 1992. This Committee explained the process, provided information, reduced anxiety and talked with aboriginal and non-aboriginal communities alike. The effort aided greatly in finding a commonality of interest.

CMAR

The recent CMAR report, "The Municipal Aboriginal Adjacent Community Cooperation Project," appears to conclude that face-to-face communications between First Nation and local governments are critical to the success of a partnership.[10] Communication is a key to success and at the same time remains one of the greatest challenges.

ii.) Adjacent aboriginal and non-aboriginal communities that consider themselves to be a whole community tend to have more positive relationships.

British Columbia

Aboriginal and non-aboriginal communities with little or no personal contact seem to harbour perceptions of incompatible objectives and aspirations. GVRD and Lower Mainland Treaty Advisory Committee (LMTAC) officials suggested that just getting to know on a personal level, aboriginal communities and aboriginal people, is the most effective way to develop

---

[8] March 2000 letter from Bill Comaskey Chairperson to Northern Manitoba Roundtable sponsors.

[9] Although several reasons may explain why it is so difficult to arrange such meetings, one explanation might be that First Nations may view municipal governments as a lesser form of government when compared to Canada or the provinces and territories.

[10] Tamera Services Ltd. did not receive a copy of a draft of the report but had the benefit of discussing the contents of the May 7th, 2002 draft with the authors of that report.

relationships between communities. In the GVRD, it appears as though smaller municipalities are more successful in relationship building than the larger more cosmopolitan members of the regional government. One could reason that aboriginal and non-aboriginal community relations may take a higher profile in smaller local governments because they are in fact neighbours.

Alberta

Schools used in common by aboriginal and non-aboriginal communities appear to be particularly effective in teaching children and parents that there are interests in common that cross racial, cultural and governmental boundaries. Councillors from the Municipal District of Lesser Slave River and from Cardston County offered this observation.

Yukon

The Yukon stands out in Canada as a jurisdiction where aboriginal and non-aboriginal communities are for most intents and purposes, "normalized". Thirteen of fourteen communities in the Yukon can be described as adjacent aboriginal/non-aboriginal communities. These communities were founded because of historical and economic events that drew settlement by aboriginal and non-aboriginal people to a particular location. The entire historical tapestry of those communities is woven of Indian and non-Indian cultural and racial fabric.

The demographics, history, and character of "Yukoners" tends to lower the profile of status and what "makes us different" in the Yukon.

Ontario

In the words of an elected official of Lanark, Ontario, "if we find ways to socialize and have fun together, the Demon's teeth fall out." It is this individual's view that youth appear to be more open-minded and inclusive of different cultures and can therefore assist in breaking down barriers within and between families of all races and cultures.

CMAR

The CMAR Report will also capture this observation. There is a constant need to maintain and build trust and community relations through a positive communication strategy. Communications to the world at large and between First Nation governments and local governments should focus on stories of community support. Sometimes personal relations cannot and will not be enough to carry the initiative.

Provincial and territorial governments should encourage local governments and First Nation governments to engage in relationships at the individual level, at the community level, and to build on personal interactions by encouraging and formalizing open, honest, face-to-face dialogue between governments.

1. Provide resources to provincial and territorial municipal representative organizations to administer an ongoing "Community to Community Forum Program". An excellent model to consider is the program currently being

administered in British Columbia at the local and provincial level by the Union of British Columbia Municipalities.

2. Seek out, encourage and resource *ad hoc* joint initiatives between municipal interest groups and First Nation interest groups to form joint advisory committees. These advisory committees could travel to local communities and engage the community in whatever the issue may be.

3. Encourage and resource local governments to employ aboriginal persons and to procure through aboriginal suppliers.

4. Develop and resource, in conjunction with local governments and First Nation governments, communication plans that broadcast in a variety of media, stories of positive aboriginal and non-aboriginal governmental and community interactions.

Leadership is Critical

Leadership is Critical in Establishing and Maintaining Ongoing Positive Relationships Between First Nation and Local Governments

i.) At some point, elected and employed officials of First Nations and local governments must recognize the importance of identifying common interests and the pursuit of mutual benefits.

Those First Nations and local governments that currently enjoy positive relationships started the process because of extraordinary leadership. At some point someone must decide that First Nation and local government relations are important. Several local governments stressed that insight, patience and persistence are often necessary in engaging First Nations.

Alberta

The Townsite of Redwood Meadows, situated within T'suu T'ina Indian Reserve # 145 in southern Alberta, is an excellent example of the kind of leadership required. On September 6, 1974, the T'suu T'ina First Nation conditionally surrendered a 1,592.26 acre portion of the Sarcee Indian Reserve # 145 for a period of 75 years. The purpose of the surrender was to facilitate Redwood Meadows, a country residential development. The development now consists of 351 homes (1,141 residents) on federal *Indian Act* leasehold interests (*designated leasehold lands*) expiring in 2049.

Originally a T'suu T'ina controlled development corporation (Sarcee Development) delivered services to the Townsite residents. Eventually the residents formed the Townsite of Redwood Meadows Administration Society (TRMAS) and began delivering services to members on a fee-for-service basis. The arrangement has been an undeniable success. The Townsite provides all services for the community in addition to potable water to the T'suu T'ina-owned golf club house and for fire protection for a neighbouring local government. Most of this was largely provided without federal, provincial or First Nation assistance. The leadership shown by the Townsite's Council and administration coupled with continuing relationship building efforts with the T'suu T'ina First Nation and Sarcee Development

Corporation has ensured that Redwood Meadows can operate relatively normally as a local government with a rather unusual "non municipal" legal status.

Saskatchewan

Because positive relationships are largely based on trust and faith, leaders who are respected because of integrity, impartiality and other positive characteristics tend to be the most successful. One good example is a former Mayor of Saskatoon, Cliff Wright. Mr. Wright was named later as a Treaty Commissioner in Saskatchewan. Leaders of this stature are respected by all parties and, to some extent, draw the best characteristics out of all parties.

Provincial and territorial governments should encourage and support educational programs designed to help political leaders and government administration find common ground.

2. Encourage, develop, facilitate and resource educational programs for local governments and First Nation governments and staff to jointly attend. Interest based negotiation techniques should form the core of the programs developed.

Formal Arrangements

Formal Arrangements Such as Memoranda of Understanding, Agreements in Principle and Development and Service Agreements, Help Institutionalize Positive Working Relationships

i.) Bottom-up agreements are successful in stimulating interest in cooperative government.

British Columbia

LMTAC and GVRD have described bottom-up agreements as agreements that address common interests of First Nations and local governments.[11] Examples include joint business ventures, service and parks agreements. Bottom-up agreements recognize those instances where co-operative relationships benefit both orders of government without forcing a relationship.

Alberta

A good example of a formal understanding between local and First Nations governments is the 1999 Memorandum of Understanding (MOU) between the Regional Municipality of Wood Buffalo (RMWB) in Alberta and the Athabasca Tribal Council (ATC) representing five (5) First Nation governments within the boundaries of RMWB. While the protocol is brief and general in nature, it does provide a level of profile that guides both governments to work cooperatively on a number of joint service and mutual aid agreements, either for the regional good of both the RMWB and the collective First Nation governments (as represented by the ATC), or for the specific First Nation. The MOU is a three (3) year agreement that is currently under review with the ATC and RMWB at the table discussing

[11] David Didluck (LMTAC) and Mario Piombini (GVRD) Principles and Perspectives on Aboriginal Governance, Lower Mainland Treaty Advisory Committee and the Greater Vancouver Regional District, December 2000,pages 28 and 29.

enhancements. While the MOU may not be perfect, the Mayor and senior officials of the RMWB shared that they feel the effort is helping to foster improved relationships through better communication and understanding. It is important to note that, during the first term of office in 1996 of the newly incorporated RMWB, the 10-person council for the RMWB had two First Nation members run for office on the new council; one Chief was elected, and one other First Nation member was also elected. First Nation representatives also serve on a number of agency boards and committees of the RMWB.

Yukon

The Yukon is witness to an increasing number of agreements between the First Nation governments, local governments and the Yukon Territory that address the provision of services based on collaborative efforts. A relatively new Yukon *Municipal Government Act* has provided the flexibility for local government to explore service delivery with First Nations (individually or in a regional government sense). Specific services can be provided through separate agreements, or bundles of services (each provided by different entities) can be provided in a region through a single agreement.

Yukon officials have indicated that the additional flexibility provided in the new Act has set the tone for negotiations. Although discussions continue, the sense of urgency and tension often associated with change is largely missing. Challenges and issues do remain, but there is a sense that participants will find a way to make local government work.

ii.) Treaty Framework Agreements that require agreement or good faith discussions prior to reserve creation can also serve as inducements to bring First Nation and local governments together to negotiate.

Saskatchewan

The City of Saskatoon found that it was very useful having an agreement between FSIN, Canada and Saskatchewan (the Saskatchewan Treaty Land Entitlement Framework Agreement 1992) requiring First Nations to negotiate with urban local governments prior to reserve creation. This requirement made it clear to First Nations that it would be in the best interest of the First Nation to accommodate the best interests of the local government. The Department of Indian Affairs and Northern Development also requires First Nations to negotiate with Saskatoon's adjoining municipality, the Rural Municipality of Corman Park # 344.

CMAR ("regulatory obligations") Saskatchewan and Manitoba

The CMAR report describes this requirement to consult in both the Saskatchewan and Manitoba Framework Agreements as a "regulatory obligation."[12] It serves as a positive pressure in that it ensures that First Nations that want land within urban municipalities must consult with appropriate urban governments. A negative aspect to such a requirement is that First Nations may feel they are forced to negotiate. If the relationship is solely supported by

[12] Indian and Northern Affairs Canada require First Nations to negotiate with local governments as part of the current "Addition to Reserves Policy". Both the Manitoba and Saskatchewan Treaty Land Entitlement Framework Agreements require First Nations to "enter into discussions" with local governments should treaty land entitlement lands be selected within local government areas.

formal requirements, it may be characterized as rights-driven versus value (or interests)-driven. The danger in these types of relationships is that parties focus on the minimum that must be done as opposed to concentrating on what works for all. When a situation changes and relationships and negotiations are rights-driven, it may be difficult to find solutions acceptable to all. It is a delicate task to shift rights-driven negotiations to interest-based negotiations. At least two success stories, The Pas and Saskatoon, demonstrate the difficulty in establishing and maintaining this process.

The Pas, Manitoba, is currently negotiating with Opaskwayak Cree Nation and other neighbouring First Nation communities for support to approach Canada and Manitoba for the establishment of a tax-exempt area for the entire town. The current situation only recognizes tax exemption for the First Nation urban reserves in The Pas. Negotiations for a common position continue. A similar situation has developed in Saskatoon where Saskatchewan has recently (after the 2000 Saskatchewan budget) required Indians to pay provincial sales tax off reserve. Saskatoon is negotiating with Muskeg Lake First Nation for a mutually acceptable system to address on and off reserve business competition concerns. In both instances, the First Nations involved and respective urban governments cannot agree how to accommodate each other's interests.

iii) Precedents provided to First Nations and local governments are useful as they help organize minds and reduce anxiety over the unknown.

A number of interviewees indicated that papers, studies, handbooks and manuals prepared by various entities were very useful for municipalities and First Nations in developing positive relationships, understanding the treaty and reserve creation process, and designing service agreements and land use compatibility agreements. Understanding these issues is not to be presumed as they are framed by complicated facts and history, constitutional and other legal principles as well as the dynamics of intergovernmental relations.

Good examples of "Tool Box Manuals" include the August 2001 *Lower Mainland Treaty Advisory Committee Policy Alternatives Handbook*, the *1999 Land Transfer and Reserve Creation Process Manual* prepared by Canada, the Treaty Land Entitlement Committee of Manitoba Inc. and the Province of Manitoba, and a *Reference Manual for Municipal Development and Service Agreements* prepared by Manitoba Justice for use by all Manitoba municipalities. A number of organizations such as the Lower Mainland Treaty Advisory Committee, the Union of British Columbia Municipalities, the Centre for Municipal and Aboriginal Relations, the Institute on Governance, the Federation of Canadian Municipalities and the Indian Taxation Advisory Board, maintain data bases with reports and manuals specifically designed to assist municipalities and First Nations in positive relationship building. Other sources of information include government websites containing posted materials, programs and other resources.

iv.) Precedents prepared for First Nations and local governments do not replace the need to access advisors with specialized knowledge.

Notwithstanding materials that are available, it was not uncommon to hear local governments complain that binders should not replace access to advisors with specialized skills in aboriginal relations, treaty and aboriginal rights, law, drafting and intergovernmental relations. Where larger local and regional governments do maintain such resources, most local governments rely exclusively on assistance from provinces and territories.

v.) Good technical people involved in the drafting process are necessary but good drafting does not create good relationships.

LMTAC and GVRD have expressed the view that good rules make good neighbours. There are, however, instances where agreements have overlooked major issues such as unexpected dramatic growth of First Nation communities and corresponding strains on local government service infrastructure. CMAR's study consultant has referred to this situation as occurring between Westbank First Nation and the Central Okanogan Regional District in British Columbia. Notwithstanding an obvious deficiency in the First Nation – Local Government Service Agreement, parties have found a way to maintain the arrangement beyond the four corners of the legal document. This example illustrates a proposition expressed by UBCM: Agreements should be built on relationships rather than relationships being built on agreements. Perhaps this is another way to express that agreements should be bottom-up (built on understanding and pursuing common interests). The Westbank example also illustrates that, notwithstanding conflict (including litigation), both communities acknowledge it is essential that they cooperate for them both to prosper.

vi.) Agreements can set out Alternate Dispute Resolution (ADR) processes that provide certainty, flexibility, predictability and empower all participants.

A number of interviewees were concerned that agreements might not be enforceable against First Nation governments. This was mentioned as a factor that hinders positive working relationships. In one instance, in Alberta, a dispute is not being resolved through the ADR process even though such a process was set out in the signed agreement (presumably one or both parties lack faith in the process or each other) Notwithstanding this concern, there have not been many disputes that have been taken to court or arbitration (if arbitration was included as an ADR option in the agreement in question). A recent Institute on Governance report considered principles for designing Dispute Resolution Systems and recommended the Nisga'a Agreement Model. This model includes the following principles:

1. *Use interest-based approaches wherever possible;*
2. *Develop rights-based mechanisms that are low-cost, flexible and minimize the damage to relationships when interest-based approaches do not work or are not appropriate;*
3. *Provide a clear 'road map' for how the parties move from one stage of the system to the next;*
4. *Ensure that the parties have the necessary knowledge and skills to use interest-based techniques;*
5. *Build an assessment component to the design process;*
6. *Empower future participants to assist in the design of the system so that it reflects their culture and priorities;*

7. *Recognize the importance of prevention;*
8. *Ensure that the design calls for ongoing maintenance, feedback and re-evaluation of the dispute settlement system; and*
9. *Keep things simple.*[13]

This model reflects the themes identified in this report that facilitate harmonious and productive relations between First Nation and local governments.

Provincial and territorial governments should assist local governments and First Nation governments in the preparation of various forms of agreements and protocols that facilitate positive relationships. Federal/Provincial/Territorial Agreements touching on local government and aboriginal issues should be drafted in a way that facilitates positive relationships between local governments and First Nation governments.

1. Manuals, precedent service[14] and development agreements and other resource documents should be designed for each jurisdiction, updated and made available to local governments and First Nation governments.

2. Treaty Agreements between Canada, First Nations and Provincial/Territorial Governments, in consultation with appropriate local governments, should expressly address municipal and school taxation issues and reserve creation within urban and rural local government boundaries.

Resources, Expertise and Capacity

Local and First Nation Governments Require Resources, Expertise and Capacity to Create, Enhance, and Maintain Harmonious and Productive Relationships

i.) Solutions to jurisdictional and land use issues are often beyond the reach of many local and First Nation governments. Access to special advisors and funding would be helpful.

The LMTAC, GVRD and other local governments stress that First Nations have limited capacity to participate in various initiatives and meetings. Some elected and appointed officials also stressed that they do not have the capacity to deal with such complicated matters as reserve creation, casinos, federal and provincial relations, treaty entitlement, urban reserves and other matters of equal or greater complexity. Smaller local governments and First Nations can be, and usually are, overwhelmed. One councillor indicated that his council could not even deal effectively with cooperating and integrating with larger urban municipal governments.

---

[13] *Dispute Resolution Systems: Lessons From Other Jurisdictions*, The Institute on Governance – March 12, 1999.

[14] Maintain a library of sample agreements that can be accessed by local governments and First Nations in preparing appropriate agreements.

ii.) Services such as training in interest-based negotiations, facilitation, mediation and resource centres could be available and brokered by independent third parties.

CMAR's draft report supports the conclusion that both local and First Nation governments need "an honest third party broker" to aid in facilitation and mediation. There are circumstances when only a disinterested party that is respected by both sides can help repair or initiate relationships. The Centre for Municipal Aboriginal Relations serves as an example of a possible independent broker. Another function that such an entity could provide would be to serve as a clearing-house of resources that may be useful to First Nation and local governments.

An elected official of Lanark, Ontario, stressed this observation. Governments must focus on interests rather than rights. Healthy and lasting relationships cannot be based on positional thinking. It is essential to train all parties in interest-based negotiations. Without an understanding of each party's interests, it will be very difficult to arrive at solutions acceptable to all.

Provincial and territorial governments should dedicate resources for special advisors. These advisors would create, assemble and disseminate useful information for local governments and First Nation governments. Special advisors should also provide advice when requested. Provincial and territorial governments should consider if advice and assistance might better be provided through an existing or proposed "honest third party broker".

1. An accessible user-friendly database, whether electronic or paper, should be maintained for local governments and First Nation governments.

2. Expert provincial and territorial special advisors should be trained and made available to provide practical and helpful advice and assistance to local governments and First Nation governments.

3. Identify impartial organizations that have a strong record of successful facilitation in municipal-First Nation relations and consider supporting those entities.

Governments Must Educate Each Other

Local and First Nation Governments Must Educate Each Other in Appreciating the Nature and Scope of Each Other's Governing Authority and Governance Practices

i.) Education about differences and similarities in government models and governance practices helps prevent problems arising from ignorance or misunderstanding.

A common complaint expressed by local governments is that First Nation governments do not understand the responsibility or powers of local government. This in turn leads to ignorance of the objectives of local government and the reasons for particular administrative structures. The same can be said for local government's understanding of First Nation governments and their governance practices.

In many instances, this lack of knowledge is communicated as a lack of respect and contributes to a perception that the other is irrelevant or untrustworthy (and unaccountable). Both forms of government must become educated about respective sources of authority, obligations and objectives, interests and resources. In addition, each form of government must realize that governance "styles" may differ. Sometimes it is more important to understand who to contact about an issue rather than who has what title.

The CMAR draft report suggests that differing governing systems between governments are often not understood and that this stands as a challenge to developing and maintaining positive intergovernmental relationships. First Nation governments are subject to different policies and restrictions compared to municipalities and regional governments.

The Yukon experience also underlines that it may be appropriate to examine if the legislation empowering local governments provides the proper tools for entering into service delivery or other cooperative mutual benefit arrangements with First Nation governments.

ii.) Better-resourced local governments with proven successes should mentor less sophisticated local governments. Similarly, local governments and more sophisticated First Nation governments should mentor less sophisticated First Nation governments.

The Rural Municipality of Corman Park # 344 (the RM) is adjacent to Saskatoon, Saskatchewan. The RM indicated that Saskatoon officials continue to serve as the best resource in assisting with several requests for treaty land within the boundary of the RM. While no doubt Saskatoon offers this assistance in the spirit of prairie neighbourliness, there are other important considerations. The RM and Saskatoon have established a joint land use and development area and both subscribe to a "District Development Plan". It is in each government's interest to ensure that Indian reserves within the "District Development Area" are developed in a way that is compatible with the RM and City's Plan.

The Katzie Intergovernmental Working Group is an encouraging example of how a B.C. First Nation has decided that good government is important to its community's success. The Working Group has toured several municipalities within the Lower Mainland area. The Working group is comprised of Katzie First Nation members, federal and provincial negotiators and a representative of the LMTAC. The Katzie First Nation wants to learn more about local government roles and responsibilities to improve their own governance and to understand their neighbours' governance practices. LMTAC has indicated that other First Nations are considering the Katzie First Nation initiative as a model to establish discussions with adjoining local governments on intergovernmental relations.

A workshop hosted by the LMTAC in the fall of 2000 concluded that First Nations have little understanding of, or interest in, regional districts. *Most key relationships with First Nations will be built at the municipal level, and there needs to be improved understanding by First*

Nations of Local Government, regional districts, and the roles, limitations and inner workings of both. [15]

Provincial and territorial governments should engage Canada, First Nations and representative organizations, local governments and representative municipal organizations in a process aimed at clarifying and evaluating roles and responsibilities of all governmental authorities.

1. Pursue summit forums for each jurisdiction that aim to identify the challenges and possible solutions arising in modern municipal-First Nation relations and the roles and responsibilities of each authority.

2. Provincial and territorial governments should consider if legislation empowering local government provides for the flexibility to design innovative arrangements to jointly deliver services to and with First Nation governments.

3. Create incentives for First Nations to support and hire aboriginal students who undertake disciplines such as urban studies, planning, economics and administration.

4. Encourage local governments to institute co-op work programs where First Nations can appreciate first-hand the need for community planning, and learn the necessary governmental skills such as by-law drafting.[16]

5. Support specific cross cultural awareness programs targeted at political leaders and administrative officers of local governments and First Nation governments designed to demystify why respective governments operate with distinctive governance styles.

6. Facilitate and, if necessary, design programs that teach the nature and scope of local government and First Nation government authority and accountability together with components that draw out the interests that each governance structure is intended to satisfy.

7. Facilitate mentoring between local governments, and between local governments and First Nation governments.

Impact on Local Issues

Local and First Nation Governments Need to be Consulted in an Appropriate Way by Federal/Provincial and Territorial Governments, When the Actions of Federal/Provincial and Territorial Governments May Have an Impact on Local Issues

---

[15] David Didluck (LMTAC) and Mario Piombini (GVRD) Principles and Perspectives on Aboriginal Governance, Lower Mainland Treaty Advisory Committee and the Greater Vancouver Regional District, December 2000,page 27.

[16] David Didluck (LMTAC) and Mario Piombini (GVRD) Principles and Perspectives on Aboriginal Governance, Lower Mainland Treaty Advisory Committee and the Greater Vancouver Regional District, December 2000,page 27.

i.) A proper balance must be found in providing timely and appropriate information to local governments respecting "aboriginal" issues important to local government. Inadequate or untimely information sends a message of disrespect, encourages suspicion, and reinforces local governments' belief that they cannot influence the land claim or self-government process.

Many local governments and municipal organizations stressed the desire that they be provided with a greater role in land claim negotiations. This is particularly the case when lands within municipal boundaries (and subject to tax assessment) will be available for selection and setting aside as Indian reserve land in satisfaction of the particular treaty. The Federation of Canadian Municipalities (FCM) Municipal-Aboriginal Relations Policy reflects this sensitivity in Principle 3 (Strategic Focus), adopted at their annual conference (May 2001):

FCM will:

Land Claims

1. *urge the federal, provincial and territorial governments and Aboriginal authorities to recognize municipal governments as an order of government and, therefore, welcome at working sessions and the table for negotiations of land claims;*

2. *urge the federal, provincial and territorial governments to give outstanding comprehensive land claims and treaty land entitlements the highest priority (protracted negotiations negatively hinder local industries and impede economic development);*

3. *urge the federal, provincial and territorial governments to recognize and respect the jurisdiction and territorial integrity of municipal governments, and the applicability of territorial, provincial and municipal laws;*

4. *urge the federal, provincial and territorial governments to recognize and respect the municipal tax base and the financing of municipal services when negotiating land claims, and to require, as a prerequisite to granting taxation powers to First Nations, that the First Nations must conclude a Services Agreement with all agencies who are providing service to their lands;*

Many municipalities expressed the view that the needs of municipalities are not considered when comprehensive and treaty land entitlements are negotiated. This is also at issue when First Nation self-government arrangements are negotiated. The Alberta Association of Municipal Districts and Counties Advisory Committee on Aboriginal Issues has prepared a Draft Summary Report for the consideration of its membership. Although not yet ratified by its members, the Committee recommends that a Memorandum of Understanding be entered into with Alberta to address these concerns.

Even in jurisdictions where local and regional governments' involvement is formalized into the treaty negotiation process (B.C.), some local governments complain that they receive more timely information through newspaper articles. It is also interesting to note that British Columbia stopped funding this consultation process. CMAR and FCM officials advised that Indian Affairs and Northern Development have hired a consultant to prepare a communication kit for First Nation governments. This kit is intended to aid First Nations in communicating with municipalities that will be affected by land claims.

ii.) Federal/provincial and territorial governments should avoid complicating local discussions and should be supportive of local pragmatic solutions proposed by local and First Nation governments.

This observation is reflective of the discussion below. Both British Columbia and Saskatchewan interviewees indicated that, for positive local relations to be cultivated, local solutions must be found for local problems. "Senior" government should provide funding and let First Nations and local governments design solutions that satisfy their interests. Mixing larger and more complex constitutional and jurisdictional issues in with local negotiations will simply not lead to solutions useful for local communities.

Where it is true that local governments and First Nation governments must focus their efforts at the community level, changes in the law and federal/provincial/territorial policy can disrupt local solutions.

iii.) Federal/provincial/territorial governments must consult to avoid changes in governmental policy that may disrupt the delicate balance of First Nation and local government relations.

Another common theme expressed by several municipalities and regional governments with records of success is that "senior" governments should provide support in terms of funding, advice and other logistical support. Senior governments should not however encumber the resolution of local issues with the larger, and often-intractable questions associated with Ottawa and Provincial/Territorial negotiations. First Nation – local government agreements are delicate creations symbolizing a mutual desire to develop and maintain new relationships to address local issues in a pragmatic way. David Reed Miller described a number of Saskatchewan municipal service agreements in this manner:

> *These municipal service agreements have internal organic integrity, based in the issues that are addressed and included. They also symbolize the beginning of a new era of pragmatism as the parties state in them their intentions to develop new relationships for development based on negotiation and cooperation rather than on other kinds of uncontrolled and non-directed change.*[17]

[17] David Reed Miller, "Textual Analysis of First Nation-Municipal Agreements", Urban Indian Reserves, Forging New Relationships in Saskatchewan edited by F. Laurie Barron and Joseph Garcea, Purich Publishing Saskatoon, Saskatchewan, 1999, page 121

These agreements work because they can skirt the broader and more divisive questions of authority, the nature and scope of aboriginal and treaty rights, and federal/provincial/territorial and First Nation government negotiations on resourcing and transfer funding. There are instances when unilateral federal/provincial/territorial government change can disrupt agreements negotiated by First Nation and local governments.

Saskatoon has had several urban Indian reserves since the first reserve, the McKnight Commercial Centre, was set aside in 1988. The City has always been concerned about "maintaining a level playing field" with respect to tax between businesses on-and-off reserve. Until a recent change in the Saskatchewan 2000 budget, Indians were exempt from payment of the 7 per cent provincial sales tax (PST). After the 2000 budget, Indians pay PST on off-reserve purchases but not on on-reserve purchases. The City understands that this policy change occurred without any consultation with the City or First Nations.

A First Nation controlled business currently operates as a gas bar convenience store within a Saskatoon Urban reserve. Because of the disparity between PST chargeable on purchases by Indians off reserve and purchases by Indians on-reserve, non-aboriginal businesses close to the gas bar are at a distinct disadvantage when competing for aboriginal customers. There are approximately 30,000 status Indians resident within Saskatoon.[18] As of the date of this report, the City of Saskatoon and First Nations with Indian reserves (and businesses on those reserves) within Saskatoon have not resolved this taxation issue. The City of Saskatoon is currently considering if it will continue to support the creation of any new Indian reserves within the corporate boundaries of Saskatoon.

Provincial and territorial governments should consult in a timely and appropriate manner with local governments, prior to entering into agreements with First Nations and Canada, with the intention of identifying and addressing local government concerns.

1. Develop and implement Protocol Agreements with local governments and municipal organizations addressing provincial/territorial/municipal expectations as to the subject matter, nature and scope of "appropriate consultation" and the process to satisfy expectations.

V. Conclusion

We close with two comments. In Part III, we described the background context influencing current relationships between First Nation governments and local governments. This evolving environment has lead to continuing changes in legislation, policy and the law respecting the nature and scope of First Nation government powers and obligations. Change often brings uncertainty and, along with it, First Nation and local governments are challenged more than ever to develop and maintain good working relationships.

[18] Saskatoon's total population approximates 250,000.

Notwithstanding this tumultuous change, our research has clearly demonstrated that there are a great many success stories. Local governments and First Nation governments in many different situations and jurisdictions have realized the power of joining in common interests and mutual benefits. We believe this trend will continue.

We also note that Canada must be positively engaged in discussions with the Territories and Provinces in finding ways to help local governments and First Nation governments create, enhance and maintain harmonious and productive relationships. All governments must share this vision and participate in cooperative efforts.

Respectfully submitted,

Tamera Services Ltd.
May 31st, 2002.

Lorne J. Ternes LL.B
and
J. R. (Rick) McDonald
Managing Partners

Appendix "A" - A Perfect World

In a perfect world, what would a good working relationship between First Nation Governments and Local Governments look like?

While there has been a considerable amount of research and study across Canada most findings simply identify the problem and few address the solutions. Although there are many hypotheses regarding strategies to address issues of mutual concern, little concrete help is available. In this light, during our research, we asked local governments the above-noted question and from their responses and perspectives, we provide these observations.

- Local governments and First Nation governments are treated as co-equals[19] by federal, provincial and territorial governments.

- Local governments and First Nation governments treat each other as co-equals.

- Local governments have the appropriate authority to complement their responsibility and the First Nation, provincial, territorial and federal governments recognize their authority.

- Similarly, the local, federal, territorial and provincial governments recognize the authority and responsibility of First Nation governments.

- Local governments and First Nation governments have similar goals and objectives in relation to the provision of services to their residents. These similarities are acknowledged and there is an understanding between the two governments to work together to ensure that safe, reliable and cost effective services are provided.

- Local governments and First Nation governments accept both formal and informal forums by which common issues and concerns are addressed.

- Federal, territorial and provincial governments work equitably with both the local and First Nation governments to address issues and concerns arising from territorial, provincial or federal policy.

- Regional and community economic, social and recreational initiatives are shared cooperatively.

- Both governments have access to consistent budget funds on an annual basis. Local governments have local property assessment/taxation, fee for services and provincial grants etc. to consistently finance annual capital and operational budgets, and the First Nation governments will have, or will be provided with, an annual consistent budget

[19] 1998-99 paper titled "Delgamuukw and Diplomacy: First Nations and Municipalities in B.C." by Dr. Paul Tennant, U of B.C. political science professor.

allocation from the federal government and other sources to meet local government needs of the First Nation community.

- Local government and First Nation government leaders participate in and jointly sponsor regional events like the "Arctic Winter Games" or other community or culturally recognized events.

- Both communities join each other in special events.

- Joint informal and formal communication mechanisms are in operation.

- When local issues or disputes arise and are difficult to resolve, both informal and formal alternate dispute resolution mechanisms are in place to mediate or work through the issue. Both parties believe that, for the good of each community, some form of compromise may be necessary and every attempt is made to create a win-win solution.

- Relationships are forged at the childhood level, fostered by the local communities and educational policies of the local school boards.

- Policing is jointly shared, and common solutions are being sought to handle crime and punishment, which are sensitive to local political and cultural values. Provincial, territorial and federal policies will be flexible and supportive of local initiatives.

- Emergency services such as fire and ambulance are provided to each other.

- Educational initiatives are ongoing to help each community come to understand the roles and responsibilities of each other's governance structures.

- Economic benefits derived from regional or local resources are shared in an equitable and consistent manner.

- Treaty Land Entitlement issues that may impact the local government are shared transparently with the local government. In this regard, the federal, territorial, provincial and First Nation governments consult with local governments in an appropriate way.

- Regulatory regimes such as by-laws, development control policies and Band Council decisions are shared openly and transparently.

- Land use planning is jointly discussed in a cooperative setting and both parties attempt to accommodate the other.

When these relational principles are active, we see a community that is balanced and focused on getting together and doing what is right for its members/residents.

Appendix "B" - Acronyms

A List of Acronyms Used in This Report

Alberta Association of Municipal Districts and Counties (AAMD&C)

Alternate Dispute Resolution (ADR)

Association of Manitoba Municipalities (AMM)

Athabasca Tribal Council (ATC)

Centre for Municipal-Aboriginal Relations (CMAR)

Federation of Canadian Municipalities (FCM)

Federation of Saskatchewan Indian Nations (FSIN)

Greater Vancouver Regional District (GVRD)

Indian and Northern Affairs Canada (INAC)

Indian Taxation Advisory Board (ITAB)

Lower Mainland Treaty Advisory Committee (LMTAC)

Municipal District (MD)

Regional Municipality of Wood Buffalo (RMWB)

Rural Municipality (RM)

Saskatchewan Association of Rural Municipalities (SARM)

Saskatchewan Urban Municipalities Association (SUMA)

Tamera Services Ltd. (Tamera)

Townsite of Redwood Meadows Administration Society (TRMAS)

Union of British Columbia Municipalities (UBCM)

Appendix "C" - Questionnaires

Draft Questions for Municipal Umbrella Organizations

1. Does your organization maintain a standing or *ad hoc* committee that considers the relationship between your member Local Governments and their First Nation Government neighbours?

    - Please describe why the Committee was formed and what issues they consider?
        - How does this Committee report and relate to your organization?
        - May we contact this Committee?
        - Would you recommend anyone in particular?

2. Other than the above, does your organization provide any services for your membership, or others, tailored to address relationships between Local Governments and First Nation Governments?

    - Please describe those services and why they are provided.

3. Does the Federal Government provide any assistance to your organization respecting these matters?

    - Please describe that assistance and the reason for it.
    - Who within the Federal Government is providing that assistance?

4. Does your Provincial or Territorial Government provide any assistance to your organization respecting these matters?

    - Please describe that assistance and the reason for it.
    - Who within the Provincial or Territorial Government is providing that assistance?

5. What type of issues does your Local Government membership have with First Nations Governments respecting:

    - Land use planning and development on Indian reserves or land subject to First Nation interest?
    - Economic initiatives (such as casinos or others) on Indian reserves or land subject to First Nation interest?
    - Hard (infrastructure) service delivery?
    - Soft service delivery:

        - such as; social services, cultural, recreation, libraries, fire, policing, ambulance and emergency service (including 911 service)?

- Taxation or cost-recovery for services provided?
- Others?

6. What types of issues do First Nations Governments have with your Local Government membership respecting:

   - Land use planning and development on land in the Municipality?
   - Economic initiatives on land in the Municipality?
   - Hard (infrastructure) service delivery?
   - Soft service delivery on land in the Municipality:

     - such as; social services, cultural, recreation, libraries, fire, policing, ambulance and emergency service (including 911 service)?

   - Taxation?
   - Are there other issues raised by First Nation Governments that are a concern for your Local Government membership?

8. What seems to work in creating, fostering and maintaining positive relationships between your members and First Nation Governments?

9. What damages or hinders positive working relationships?

10. What mechanisms aid or hinder dispute resolution between membership and First Nation Governments?

10. Do you have any general comments respecting what you think cultivates, or hinders, harmonious and productive relations with First Nation Governments?

11. Can you identify any of your members that maintain on-going relationships with First Nation Governments?

    - Which are the best examples of successes that you can refer us to?
    - Are there examples of communities that had difficulty and may have insight into potential solutions?
    - Please describe the nature of the relationships and the issues addressed.
    - Will you introduce us to a knowledgeable person in your Local Government member's organization or your own organization to discuss this further?

Draft Questions for Local Governments

1. Are your Local Government and neighbouring First Nation communities connected in any way?

   - Is there substantive social or cultural interaction (such as sports activity)?
   - Is there any economic or employment interaction?

- Is there any political interaction between the Local and First Nation Governments?

2. Does your Council maintain a standing or *ad hoc* committee that considers the relationships between your Local Government and any First Nation neighbours?

   - Describe why the Committee was formed and what issues they consider?
   - How does this Committee report and relate to your Council?
   - May we contact this Committee?

3. Does the Federal Government provide any assistance to your Local Government respecting these matters?

   - Please describe that assistance and the reason for it.
   - Which agency within the Federal Government is providing that assistance?

4. Does your Provincial or Territorial Government provide any assistance to your Local Government respecting these matters?

   - Please describe that assistance and the reason for it.
   - Which agency within the Provincial or Territorial Government is providing that assistance?

5. What type of issues does your Local Government have with First Nations Governments respecting, for example:

   - Land use planning and development on Indian reserves or land subject to First Nation interest?
   - Economic initiatives (such as casinos or others) on Indian reserves or land subject to First Nation interest?
   - Hard (infrastructure) service delivery?
   - Soft service delivery:

     - such as; social services, cultural, recreation, libraries, fire, policing, ambulance and emergency service (including 911 service)?

   - Taxation and cost recovery for services delivered?
   - Others?

6. What types of issues do First Nations Governments have with your Local Government respecting, for example:

   - Land use planning and development on land in your Local Government's jurisdiction?
   - Economic initiatives on land in your Local Government's jurisdiction?
   - Hard (infrastructure) service delivery?
   - Are there other issues raised by First Nations that are a challenge for your Local Government?

7. What seems to work in creating, fostering and maintaining positive relationships between your Local Government and First Nation Governments?

8. What damages or hinders positive working relationships?

9. What mechanisms aid or hinder dispute resolution between your Council and First Nation Governments?

10. Do you have any general comments respecting what you think cultivates or, hinders, harmonious and productive relations with First Nation Governments?

11. Can you identify any other people within your Local Government that may have an insight into these issues?

12. Can you identify any other Local Governments that maintain on-going relationships with First Nation Governments?

    - Please describe the nature of the relationships and the issues addressed.
    - Will you introduce us to a knowledgeable person in that Local Government's organization to discuss this further?

Appendix "D" - Interviewees & Respondents

Those Interviewed and Questionnaire Respondents

British Columbia

Graham Dragushan Government of B.C. - telephone interview

Alison McNeil, Union of British Columbia Municipalities - telephone interview and site interview

Marino Piombini, Greater Vancouver Regional District - site interview

Kirstie Pirie and Regan Schlecker - Lower Mainland Treaty Advisory Committee - site interview

Yukon Territories

Colin J. Dean, CAO, the Village of Haines Junction - letter and telephone response

Ken Hodgins, Government of Yukon Territory – telephone interview

Northwest Territories

Yvette Gonzalez, Chief Executive Officer - NWT Association of Municipalities, telephone interview

Alberta

Neil Reddekopp, Government of Alberta, site interview

Alberta Urban Municipalities Association – letter response

Alberta Association of Municipal Districts and Counties – letter response and two site interviews of an *ad hoc* advisory committee

Ken Enion, Corporate Services Director, Red Deer County - site interview

Mayor Tim Anderson, two other board members, and the Townsite Manager, Townsite of Redwood Meadows Administration Society- site interview

Dave Putz, Regional Manager - Regional Municipality of Wood Buffalo - site interview

Bev Fedorak, Director, and Heather Evasiuk, Allan Grandison, Community Development, Regional Municipality of Wood Buffalo - site interview

Jeff Carlisle, Fire Chief, Fred Baehl, Emergency Preparedness Director, Regional Municipality of Wood Buffalo - site interview

Louise Belanger, Change Manager, Regional Municipality of Wood Buffalo - site interview

Mayor Doug Faulkner, Regional Municipality of Wood Buffalo - site interview

A/Sgt. Scott Stauffer and Constable Ian Sanderson, Regional Municipality of Wood Buffalo - site interview

Stephen Clark, Director of Planning and Development, Regional Municipality of Wood Buffalo - site interview

Larry Wright, Superintendent of Utilities, Adrien Lefebvre, Superintendent of Facilities, and Phil Pearson, Manager, Engineering and Public Works, Regional Municipality of Wood Buffalo - site interview

Saskatchewan

Keith Schneider, Executive Director, Saskatchewan Urban Municipalities Association - telephone interview

Lorne Sully, Manager and Theresa Dust Q.C., City Solicitor - City of Saskatoon - site visit

Laura Hartney, Director and Tammy Knuttila, Administrator - R.M. of Corman Park # 344 -site visit

Manitoba

Michelle Richard, Government of Manitoba, telephone interview

Joel Masi, Executive Director - Association of Manitoba Municipalities, telephone interview

Ontario

Association of Municipalities of Ontario – E-mail response

Mayor Larry McDermott Mayor of Lanark Township – on site interview

Nova Scotia

Jim Langil, Municipality of Truro - Telephone interview

Prince Edward Island

Julie McMurrer, Administrative Assistant, Federation of Prince Edward Island Municipalities - Response by fax

Federation of Canadian Municipalities

Janet Neves, Federation of Canadian Municipalities – Telephone interview and site interview

Carolyn Hunter, Centre for Municipal Aboriginal Relations- on site interview

Appendix "E" - Terms of Reference

Local Governments- First Nations Government Project

Project working title: Project Concerning Relations Between Local Governments and First Nation Governments.

Purpose: The purpose of the project is to enhance the capacity within the local government system to cultivate harmonious and productive relations with First Nation governments.

The consultant will provide the following services:

1. Survey and describe what works in diplomatic and functional interactions and relationships between local and First Nation governments in urban and rural communities in various jurisdictions in Canada. Particular attention to be given to the following three areas where there is the greatest opportunity to foster better relations between local governments and First Nations:
    i.) How do they deal with land use planning and development and with other economic initiatives, such as casinos, in their neighbouring communities?
    ii.) How do they cooperate successfully in hard- and soft-service delivery?
    iii.) What mechanisms work effectively in dispute resolution?

2. List relationship-building principles and mechanisms derived from interaction/relationship success stories.

3. Work with, and interview, people on the Alberta Association of Municipal Districts & Counties' ad hoc Advisory Committee on Aboriginal issues, members of the project steering committee and other individuals with expertise in this area of study, including members of the Union of British Columbia Municipalities, and contact from a coast-to-coast sample of urban local governments that have adjoining First Nation neighbours.

4. One progress report, three drafts, and one final report to be submitted to Municipal Affairs as per the following schedule:
    i.) Interim progress report to be submitted by February 28, 2002;
    ii.) First Draft report to be submitted by March 29th, 2002;
    iii.) Second draft report to be submitted by April 26, 2002;
    iv.) Third draft report to be submitted by May 17, 2002; and
    v.) Final report to be submitted by May 31, 2002.

Appendix "F" - Research Materials List

"2001 Community to Community Joint Forum-Final Report", March 2001, Union of British Columbia Municipalities.

"A Reference Manual For Municipal Development And Service Agreements", 2001, Manitoba Justice for Manitoba Department of Intergovernmental Affairs and Manitoba Department of Aboriginal and Northern Affairs.

"Aboriginal Affairs and Electoral Area Committee Terms of Reference", Marino Piombini, (source-provided March 22, 2002).

"Aboriginal and Non Aboriginal Partnerships: Building Blocks for Sustainable Community Development", Wayne Dunn and Bob Isbister, October 2001, for the British Columbia Ministry of Community, Aboriginal and Women's Services.

"Aboriginal/Non Aboriginal Partnerships"- Partnerships Sustaining the Basin, page 14, GVRD, City of Abbotsford and the Matsqui First Nation-Matsqui Trail Regional Park, Spring 2000 – Fraser Basin Council Special Report, (source-provided March 22, 2002).

"An Examination of New Reserve Creation in the Town of The Pas: A Case Study", June 2001, for Manitoba Aboriginal and Northern Affairs.

"An Incremental and Measured Approach to Reconciliation", By David Didluck and Cameron Thorn, discussion paper.

"Building Trust: Capturing the Promise of Accountability in an Aboriginal Context", John Graham, May 1999, Institute on Governance.

"Business Plan – July 1999", Centre for Municipal-Aboriginal Relations, (Janet Neves, source-provided April 11, 2002).

"Centre for Excellence in Municipal-Aboriginal Relations Announced", DIAND, ITAB and Federation of Canadian Municipalities, Calgary June 3, 1996.

"Circle of Light", July-August 2001, Number 14 Indian and Northern Affairs Canada Newsletter, (Kirstie Pirie Source-provided March 22, 2002).

"Common Questions About Urban Development Centres in Saskatchewan", By Theresa Dust, January 1994.

"Community to Community Forum", July 12, 2001, Rhombus Hotel, Chilliwack, Skyway First Nations and City of Chilliwack, Session Summary.

"Community to Community Forum", Press Release Issued March 11, 2002 by the Municipality of Whistler, Village of Pemberton, Squamish-Lillooet Regional District, Mt. Currie Band, Douglas Council, N'Quatqua Council, Samanquam Council and Skatin Tribal Council, (Kirstie Pirie source-provided March 22, 2002)

"Concept Paper and Course Outline – Building Better Relationships: A Five–Day UBC Pilot Course for Creating and Fostering Intergovernmental Relationships Between First Nations and Local Governments", Marino Piombini March 19, 2002 draft – Greater Vancouver Regional District, (Source – provided March 22, 2002).

"Conference Update: Aboriginal Governance in Urban Settings 2002", Regan Schlecker, a summary of a Conference for Aboriginal Governance in Urban Settings held March 7 to 9 in Vancouver (Source – provided March 22, 2002).

"Considerations: A Guide to Lower Mainland Area Local Government Interests in Treaty Negotiations", July 2000, Lower Mainland Treaty Advisory Committee (Kirstie Pirie Source – provided March 22, 2002).

"Creating Value through Corporate-Aboriginal Economic Relationships", Janet Neves, Stelios Loizides and David Greenall, February 2001, Conference Board of Canada (Source provided April 11, 2002).

" Delgamuukw and Diplomacy: First Nations and Municipalities in British Columbia", By Paul Tennant, Department of Political Science, UBC.

"Discussion Paper: Relations Between First Nation Communities and Local Governments", Provincial and Territorial Senior Officials of Local Government Committee, June 2001.

"Dispute Resolution Systems: Lessons From Other Jurisdictions", The Institute on Governance – March 12, 1999.

"Establishing Urban Development Centres", April 1994, Federation of Saskatchewan First Nations (FSIN) and the Saskatchewan Association of Urban Municipalities (SUMA), April 1994.

" Facilitating An Aboriginal Voice in Municipal Affairs", by Peter Frood, Manager of CMAR, and Leanne Bennet, Research Officer with CMAR, at the Centre for Municipal – Aboriginal Relations.

"Federation of Canadian Municipalities 1998 policy statement on: Municipal-Aboriginal/Relations", 1998 policy statement.

"Federal Treaty Negotiation Office – Treaty News at page 8 Katzie Team Tours Lower Mainland", Summer 2001 Treaty News, (Kirstie Pirie source – provided March 22, 2002).

"First Nations Gambling Policy in Canada", June 2001, Executive Summary.

" Katzie Intergovernmental Relations Working Group Summary of Accomplishments for 2000/2001", Article February 4, 2002, Prepared Without Prejudice by B.C. (Kirstie Pirie, Source – provided March 22, 2002).

"Land Transfer and Reserve Creation Process Manual", November 1999, Treaty Land Entitlement Committee of Manitoba Inc, Indian and Northern Affairs Canada (Manitoba Region), Manitoba Northern Affairs.

"Literature and Effective Practices Review of Municipal – Aboriginal Relations", Marja Hughes, June 1997, prepared for the Centre for Municipal –Aboriginal Relations.

"Local Government Interjurisdictional Issues Study – Snuneymuxw First Nation Treaty Process", Peter Adams, February 12, 2001, Semmens & Adams.

"Looking Back, Looking Forward, a Review of the BC Treaty Process" 2001, B.C. Treaty Commission.

" Lower Mainland Community-To-Community Forum, 14 September 2000 Burnaby, British Columbia – Summary of Proceedings", LMTAC, Tsleil-Waututh Nation and Lower Mainland Municipal Association, (Alison McNeil Source – provided March 22, 2002).

"Lower Mainland Treaty Advisory Committee Strategic Planning Process Final Report", , August 31, 2001 – Hemmera Envirochem, (Kirstie Pirie source – provided March 22, 2002).

" LMTAC Backgrounder", Kirstie Pirie, (Source – provided March 22, 2002).

"Member Release, Aboriginal Update: Minister Plant Commits to New Agreement with UBCM", UBCM March 7, 2002 newsletter, (Kirstie Pirie source – provided March 22, 2002).

"Memorandum of Understanding between the Province of British Columbia and the Union of British Columbia Municipalities", March 22, 1993, British Columbia Ministry of Aboriginal Affairs and Union of British Columbia Municipalities.

"Municipal –Aboriginal Relations", Adopted May 2001, FCM Annual Conference.

"Northern Mayors and Chiefs Forum – Moving Together into the 21st Century – final Forum Report", January 20 and 21, 2000, Northern Manitoba Round Table.

" Paving a New Path in Treaty Negotiations: On the Road with the Katzie Intergovernmental Municipal Tours", Article May 2001, Kirstie Pirie, LMTAC Communications Coordinator (Source – provided March 22, 2002).

"Principles and Perspectives on Aboriginal Governance, Lower Mainland Treaty Advisory Committee and the Greater Vancouver Regional District", David Didluck (LMTAC) and Mario Piombini (GVRD), December 2000.

" Regional Community Forum Information Kit", Union of British Columbia Municipalities, January 2002, (Alison McNeil source – provided March 22, 2002).

"Regulatory Impact Analysis Statement of the Indian Act *Property Assessment and Taxation (Railway Right-of-Way) Regulations* SOR/2001-493 8", November 2001, Indian Taxation Advisory Board and Indian and Northern Affairs Canada.

"Relations Between First Nation Communities and Local Governments", Minister/ Deputy Minister Briefing Note, Brad Pickering, Local Government Services, June 25, 2001.

"Re-Thinking Indigenous Self-Determination", - David L. Didluck January 15, 2002, a summary of the Re-Thinking Indigenous Self-Determination Conference held September 25 to 28, 2001 in Brisbane, Australia, (Kirstie Pirie source – provided March 22, 2002).

" Speaking Notes – Speaking Truth to Power III Conference", Director Jim Abram draft notes UBCM March 15, 2002, (Alison McNeil source – provided March 22, 2002).

"Status of Relationships Between the GVRD and First Nations in the Greater Vancouver Area", Marino Piombini (Source – provided March 22, 2002).

"Summary of the Royal Commission on Aboriginal Peoples' Final Report: Implications for Aboriginal – Municipal Relations", by the Institute on Governance, May 1997.

"Summary of the Federation of Canadian Municipalities' 1993 survey of municipalities and Aboriginal Peoples in Canada: Survey of Current Relationships", Municipal – Aboriginal relations, July 1997.

"The City of Nanaimo's Participation in the Snueymuxw First Nation's Treaty Process: Proposal for Discussion", March 15, 2002, City of Nanaimo, (Kirstie Pirie source – provided March 22, 2002).

"The Impact of Aboriginal Land Claims and Self-Government on Canadian Municipalities: The Local Government Perspective," Theresa M. Dust, Q.C., - Intergovernmental Committee on Urban and Regional Research, 1995.

"The Grand River Notification Agreement: An Effective Practices Study", Nigel H. Richardson, July 1997.

" The Tsawwassen First Nation sues Vancouver Port Authority and Others for Nuisance Over Roberts Bank Causeways - Press Release", February 29, 2002, Tsawwassen First Nation, (Kirstie Pirie source – provided March 22, 2002).

"The Village of Belcarra Between Forest and Sea: Paving a New path in Treaty Negotiations- On the Road with the Katzie Intergovernmental Municipal Tours", Kirstie Pirie, LMTAC Communications Coordinator, 2002.

"Treaty Land Entitlement in your municipality – what do you do?", Michelle Richard Article, May 2001, Municipal Leader, page 16.

"Urban Indian Reserves: Forging New Relationships In Saskatchewan", Laurie Barron and Joseph Garcea Editors 1999, Purich Publishing, Saskatoon, Saskatchewan.

"Urban Neighbours Land Entitlement and Urban Reserves in Saskatchewan", Speech by Theresa Dust Q.C., City Solicitor, City of Saskatoon, February 10, 1994.

"What's the deal with treaties? A lay person's guide to treaty-making in British Columbia," 2000, B.C. Treaty Commission.

"Memorandum of Understanding between Athabasca Tribal Council (ATC) and the Regional Municipality of Wood Buffalo 1999" and proposed amendments as reviewed by a Committee of the Whole Meeting March 19, 2002.

Appendix "G" – Benoit Case Summary

Benoit v. Canada and Alberta, Federal Court Trial Division
Campbell J., March 7, 2002

Issue: The plaintiffs allege there is a "right not to have tax imposed on Treaty 8 Indians" because of a promise given by the Treaty Commissioners at the time of treaty taking. If such a treaty right exists, has it been extinguished or, alternatively, has such a breach of a treaty right been justified?

Decision: Campbell J. held that the Indian signatories to Treaty 8 did understand that the Treaty Commissioner gave an assurance there would be no tax. Campbell J. also held that the Commissioner did not have the same understanding. In order for the honour of the Crown to be maintained, the Court held that Treaty 8 would be interpreted in a way as understood by the Indians at the time of signing. The right not to have tax imposed on Treaty 8 Indians is an enforceable Treaty right.

Canada has not extinguished this existing treaty right and there is no satisfactory justification provided to the Court for its infringement. As a matter of constitutional law, the Federal taxation provisions are of no force and effect with respect to beneficiaries of Treaty 8.

Facts: On June 21, 1899 at Lesser Slave Lake in Alberta, Canada negotiated Treaty 8 with the Indian signatories in northern Alberta. Adhesion agreements later in the year also brought the terms of Treaty 8 to northeastern B.C., part of the Northwest Territories and northwestern Saskatchewan. The Privy Council of Canada formally ratified the Treaty on February 20, 1900.

Taxation was not specifically mentioned in the text of Treaty 8 itself. The Treaty Report, a document prepared by the Treaty Commission and provided to the Privy Council, is the only historical documentary evidence to specifically mention "tax" in relation to Treaty 8. In order to interpret Treaty 8, the Court relied upon historical records, the contemporaneous accounts of Charles Mair (a secretary traveling with the Treaty Commission) and expert testimony submitted by all parties. A small number of Indian elder witnesses were called to give oral tradition evidence as to the understanding of the Indians at the time of signing. This also included a number statements accepted by the Court as oral tradition evidence.

Analysis: In its consideration of the evidence and the legal argument, Campbell J. applied the law of treaty interpretation as stated by the Chief Justice McLachlin in *R. v. Marshall*, [1999] 3 S.C.R. 456 at paragraph 78. Those principles as summarized are:

Treaty Interpretation Rules

- Aboriginal treaties constitute a unique type of agreement and attract special principles of interpretation.
- Treaties should be liberally construed and ambiguities or doubtful expressions should be resolved in favour of the aboriginal signatories.
- The goal of treaty interpretation is to choose from among the various possible interpretations of common intention the one which best reconciles the interests of both parties at the time the treaty was signed.
- In searching for the common intention of the parties, the integrity and honour of the Crown is presumed.
- In determining the signatories' respective understanding and intentions, the court must be sensitive to the unique cultural and linguistic differences between the parties.
- The words of the treaty must be given the sense, which they would naturally have held for the parties at the time.
- A technical or contractual interpretation of treaty wording should be avoided.
- While construing the language generously, courts cannot alter the terms of the treaty by exceeding what "is possible on the language" or realistic.
- Treaty rights of aboriginal peoples must not be interpreted in a static or rigid way. They are not frozen at the date of signature. The interpreting court must update treaty rights to provide for their modern exercise. This involves determining what modern practices are reasonably incidental to the core treaty right in its modern context.

Upon an application of the principles to the evidence tendered, Campbell J. found that whatever the meaning the Commissioners attached to the tax assurance they gave; it was different from what the aboriginal people understood. On the balance of probabilities, the Dene and Cree People believed that the Commissioners promised a tax exemption.

Treaty 8 Right Not to Have Tax Imposed

Applying the treaty interpretation rules, the Court held that the honour of the Crown requires that such a misunderstanding must be satisfied by an interpretation that there is a treaty right not to have tax imposed at any time for any reason.

Extinguishment

As a treaty right had been found, the Court had to consider if the right had been extinguished before April 1982 when existing aboriginal and treaty rights were constitutionally protected by s. 35 of the *Constitution Act, 1982*. Campbell J. held federal taxation legislation did not satisfy the burden on Canada to provide strict proof that the taxation legislation extinguished the right prior to entrenchment in 1982. The Court held that failure to recognize the treaty right in taxation legislation cannot form the basis for an extinguishment argument. Campbell J. went on to hold that consent of the aboriginal people in question would be needed to extinguish a treaty and also a treaty right.

Justification

Since the Supreme Court of Canada case *R. v. Sparrow (1990), R. v. Horseman* and *R. v. Badger (1996),* infringements of treaty rights can be justified by satisfaction of a common law (judge made) test that has particular regard for the special trust relationship between aboriginal peoples and Canada. In applying this test, Campbell J. reviewed the justification test as set out in *Sparrow* (a fishing case) and framed it as follows:

- Is there a valid legislative objective?
- Is Canada's special trust relationship the first consideration in assessing a justification?
- Has there been as little infringement as possible?
- If there has been expropriation, has there been fair compensation?
- Has there been consultation?

Campbell J. did not accept Canada's submission that taxation in this context was a valid objective; the honour of the Crown was maintained; the right concerned has been infringed as little as possible or that there had been adequate consultation. At paragraph 355, he states: "... at the very least [general tax legislation] requires a focused and completely open consultation with those Aboriginal People affected to reach a consensus on change."

Comments: At the time of treaty in 1899, there were no personal income taxes in place. Provincial and municipal taxes only accounted for 2.7% of all taxes paid in 1896. Today the situation is dramatically different.

The litigation as framed in the Federal Court of Canada only directly deals with federal taxation. Because of the facts, the decision only applies to Indians in Treaty 8. One can assume that pressure will mount to extend the decision's conclusions to other treaty areas and to provincial and municipal taxation. The Federation of Saskatchewan Indian Nations is considering activating a Benoit- like action in Saskatchewan. It is important to stress that this decision currently only relates to Treaty 8 Indians.

Generally municipalities are concerned that land claim settlements may result in the purchase of deeded municipal taxed lands that are then set aside as tax exempt Indian reserves. This process removes previously taxed lands from the municipal tax and education tax base. A complete application of Benoit principles would mean that municipalities, as well as all other governments, could not tax Indians. The general tax exemption for treaty Indians would apply irrespective of residence on-or-off reserve.

As of April 2002, Canada has filed an appeal. Alberta has filed a "Notice of Appearance" advising of her intention to be involved in the appeal. The Court has granted a stay, meaning that for the term of the stay, the general tax exemption in Treaty 8 lands will not apply. The Federal Court of Canada has scheduled the appeal for November of 2002.